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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th April 2007

No.3688-1i/1-(B)82/2001/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 30th November, 2006 in I.D. Case No. 3 of 2003 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of Bhubaneswar Development Authority, Bhubaneswar and its workman Shri Daitari Behera, represented through B.D.A. employees Union, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below:—

(This supersedes L & E Department earlier Notification No. 534/LE; dt. 17-1-2007)

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 3 of 2003

Dated, the 30th November, 2006

Present:

Sk. Jan Hossain, O.S.J.S.(Sr.Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The Management of
Bhubaneswar Development Authority,
Bhubaneswar

... First- Party —Management

And

Their Workman
Shri Daitari Behera,
represented through B.D.A.
Employees Union,
Bhubaneswar.

... Second-Party—Workman

Appearances :

Shri L. K. Mohapatra, A.L.O.

... For the First-Party—Management

Shri A. Panda, General Secretary
of the Union.

... For the Second-Party—Workman

AWARD

The Government of Orissa, in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section(5) of section 12 readwith clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their order No.2085-Ii/1-(B)-82/2001/LE., dated the 3rd March 2003 : —

“Whether the action of the Management of Bhubaneswar Development Authority, Bhubaneswar in reducing the scale of pay of Shri Daitari Behera Security Guard From Rs. 850/- - Rs. 1100/- to Rs. 750/- - Rs. 940/- vide their Order No. 7570 dated the 11th December 1998 is legal or justified ? If not, what should be the details ?”

2. The Bhubaneswar Development Authority is an organisation Under the O.D.A. Act. It has its own Board of Directors to take policy decisions to look after the day to day business of the organisation. The brief facts of the case are that the workman was engaged as a Security Guard by the Management on N.M.R. basis in the year 1980 and after completion of five years successful continuous service he was made regular in office order No. 3708 dated the 15th June 1995 in terms of the agreement between the Management and B.D.A. Employees Union entered into on 29th April 1990 in the pay scale of Rs. 825-1100/- towards the basic pay w.e.f. 25th April 1995 and paid till December, 1998. In pursuance of order No. 7470 dated the 17th December 1998 the pay scale of the workman has been changed and it was ordered that he will be entitled to get the scale of Rs. 750-940/- by reducing his pay scale from Rs. 825-1100/-. The workman has challenged the aforesaid order of changing the pay scale. As the management did not take any steps, the matter was brought to the notice of the District Labour Officer-*cum*-Conciliation Officer, w h o after hearing the parties submitted a failure report and recommended that the dispute be sent for adjudication. The appropriate Government was of the opinion that an industrial dispute exists and accordingly it referred the dispute to this Tribunal for adjudication.

3. The First-Party—Management in its return submitted that initially the workman was engaged as an N.M.R. Security guard and on completion of five years, his services were regularised and in advertently the scale of pay of Rs. 825-1100/- was attached to him. As no such pay scale was then prevailed under the Orissa Revised Scales of Pay rules, 1989, the authority in its 36th meeting dated the 30th August 1997 decided the scale of pay of the Class-IV employees of the State Government and fixed the scale of pay to the post of Security Guard under the B.D.A. at Rs. 750-940/- alongwith additional surrender of 15 days Earned Leave to maintain equilibrium at par with the scale of pay of State Government employees. The protection of pay was given to the workman up to 1-4-1998, the date of his joining. According to it, the reduction of scale of pay was done as per the decision of the authority due to non-existence of scale of pay under the State Government. In the year 1994. 33 nos. of permanent labourers were engaged as Security Guards in the scale of pay of Rs. 750-940/- (present scale of pay of Rs. 2550-3200/-) after completing Security Guard training for 45 days. They has filed O.J.C. No. 11324/97 claiming equal scale of pay as claimed by the present workman. According to the Management, the present dispute is not maintainable.

4. On the basis of respective cases of the parties, the following issues have been framed for consideration : —

ISSUES

1. "Whether the action of the management of Bhubaneswar Development Authority, Bhubaneswar in reducing the scale of pay of Shri Daitari Behera, Security Guard from Rs. 850-1100/- to Rs. 750-940/- vide their Order No. 7570 dated the 11th December 1998 is legal or justified ? If not, what should be the details ?"

5. In support of the claim the workman examined himself as W.W. No. 1 and got marked Exts. 1 to 7. The Section Officer of the B.D.A. was examined on behalf of the Management. It also produced document marked as Exts. A to H.

6. It is not indispute that the workman joined as an N.M.R. in the services of the B.D.A. on 11th April 1990. His service was regularised w.e.f. 25th April 1995 and he worked as a Security Guard in the pay scale of Rs. 825-1100/- . According to the statement of the workman Shri Daitari Behera, W.W. No. 1 he has stated that his basic pay was reduced to Rs. 750-940/- unilaterally by the Management. No opportunity of hearing has been given to him in reducing his basic pay. He has also stated that he made a representation and on his said representation the Management sought clarification from M/s. IPICOL and O.M.C.. It came to light from the letters marked as Exts.5 and 6 that the basic pay of the Security Guards (similarly situated persons) in their departments was Rs. 825-1100/-. The version of the workman has also been supported by the documents marked as Exts. 1 to 4 and 7. There is nothing in the cross-examination to disbelieve the said assertion of the workman. The case of the Management was that there was no scale of Rs. 825-1100/- in the Government, except this no other reasons have been assigned with regard to reduction of the workman's basic pay. There is no material to that effect.

7. The Hon'ble Supreme Court in the case of Surinder Kumar Trehan, Appellant Vrs. Union of India and others, Respondents, reported in AIR 1994 SC 1592 have observed as follows:—

(B) Industrial Disputes Act (14 of 1947), Sch. III Item I - Basic pay- Fixation of Employee working in services of Thermal power Station of Central Electrical Authority-Administrative control of that Power Station taken over by National Thermal Power Corporation in 1978- Fixation of last drawn basic pay in year 1980 by CEA- Illegal - Any reduction in basic pay of employee on basis of that order of CEA - Also not permissible."

8. On the basis of the above principles of law laid down and the facts of the present case, the Management has failed to discharge its burden in showing before this Tribunal the acceptable reasons with regard to reduction of workman's basic pay. The Management is directed to grant the scale of pay of Rs. 825-1100/- to the workman appointed vide order No. 3708 dated the 15th July 1995.

The reference is answered accordingly.

Dictated & corrected by me.

Sk. Jan Hossain
30-11-2006
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Sk. Jan Hossain
30-11-2006
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government